falls to be decided on the simple question as to whether or not there was any false imprisonment of the plaintiff. Even if there was any imprisonment, on the authorities the defendant was clearly not liable in damages.

With regard to the alleged false imprisonment of plaintiff at the hands of the defendant on the land itself, the only evidence was that the defendant told the plaintiff not to pluck coconuts from the land as he (the defendant) was entitled under a lease to the produce of the land. There was thus no false imprisonment of the plaintiff on the land.

There was no false imprisonment of the plaintiff at Kampong Bahru either. The plaintiff's evidence was that he was stopped by the defendant in Kampong Kuantan Town. He was stopped from selling the coconuts in the presence of many people because the defendant said that the coconuts were his and he (the plaintiff) then went home leaving the coconuts there. The defendant's evidence was that he "tahan" the plaintiff and the coconuts at a shop in Kampong Kuantan as a result of which the Chinese woman at the shop refused to buy the coconuts. It is true that "tahan" means "to restrain", but it also means "to stop". In the light of all the evidence it would seem to be abundantly clear that the plaintiff was not restrained in his movement of action. After what happened at the Chinese shop in Kampong Kuantan he was not stopped from going where he willed, and in fact there was evidence that he left the shop and went away.

It is also clear that the plaintiff was not arrested and detained by the police as a result of the report made by the defendant. All that the defendant did was to make a report to the police accusing the plaintiff of theft of coconuts, but merely to make a report against a person without actual arrest is not imprisonment which will support an action for false imprisonment (see *Simpson* v. *Hill* [13]). The other evidence was that a Police Sergeant asked the plaintiff to go to the Police Station. The plaintiff did so on his own bicycle. There was no evidence that he was compelled to follow the Sergeant to the Police Station. At the Police Station itself the plaintiff was not arrested, detained or confined in any way. A dispute had arisen between the parties and the police were merely carrying out investigations to ascertain the truth. There was some delay in interviewing the parties at the Police Station because the Police Inspector was not free to see them as soon as they arrived, but after the interrogations the plaintiff was allowed to leave because the Inspector was satisfied that the dispute between him and the defendant was of a civil nature. In the circumstances the learned President was quite right in dismissing the plaintiff's action for damages for false imprisonment. This appeal is therefore dismissed with costs.

Appeal dismissed.

Solicitors: *Doraiswamy Aiyer & Kok Thoy; Athi Nahappan & Co.*

DEPUTY PUBLIC PROSECUTOR v. ABDUL RAHMAN

[A. Cr. J. (Winslow J.) April 26, 1963]

[Singapore — Magistrate's Appeal No. 20 of 1963]

Penal Code, ss.361 and 363 — Kidnapping of female minor from lawful guardianship — Whether Muslim girl who attains puberty has guardian — Whether this only confined to Hanafi sect — Meaning of "lawful guardian".

Guardianship of Infants Ordinance (Cap. 16), s.5 — Whether Muslim girl of Hanafi sect who has attained puberty has lawful guardian — Meaning of "lawful guardian".

The accused was charged with kidnapping a female minor under 16 years of age from the lawful guardianship of her father contrary to section 363 of the Penal Code. The girl in question, aged 14 years, voluntarily left Singapore in the company of the accused for Seremban without the consent of her father with a view to getting married to him there which they did. At the end of the prosecution case the learned District Judge acquitted the accused on the ground that the girl was of the Hanafi sect and as she had attained puberty she no longer had a lawful guardian and in the circumstances she could not be said to have been taken away from lawful guardianship within the meaning of section 361 of the Code. On appeal by the Crown,

Held: (1) in this case there was no evidence to support the proposition that the girl was an adherent of the Hanafi sect. If the respondent had wished to rely on *Ghouse's* [2] case it was for him to establish this or to raise it in his defence;

(2) although McElwaine C.J. held in the *Ghouse's* case that a Muslim girl who had attained puberty had no guardian and therefore she could not be taken out of the keeping of the lawful guardian, on an examination of his judgment and the authorities cited by the learned Chief Justice it was clear that a girl only of the Hanafi sect was free from the custody of her guardian as regards the selection of a husband. The emphasis is on her capacity to marry and not on her absolute freedom from the custody of her guardian for all purposes;

(3) the attention of McElwaine C.J. was not drawn to section 5 of the Guardianship of Infant Ordinance in the *Ghouse's* case and his conclusion would have been different if this was done;

(4) in this case in the absence of other evidence the lawful guardian of the girl was her father until her marriage;

(5) the expression "lawful guardian" in section 361 of the Penal Code must be given a meaning which accords with the provisions of section 5 of the Guardianship of Infants Ordinance and the explanation to section 361. If, in its discretion, the Court decides to modify its strict construction of who the guardian is, it may have recourse to Muslim Law so as to do justice to the facts of any particular situation.

Per curiam: In the light of the authorities, it would be dangerous to regard a Muslim girl of the Hanafi sect as being without any lawful guardian for the purposes of the Penal Code merely because she has attained puberty and is free, without the guardian's consent, to make her own selection of her future husband. To hold otherwise would be to expose every Muslim girl professing the tenets of the Hanafi school, who has attained puberty, to the rapacity or cunning of every would-be Lothario, enticer or potential seducer who would only need to cite *Ghouse's* case to escape conviction and punishment.

Cases referred to:—

(1) *R.* v. *Kipps* 4 Cox C.C. 168.

(2) *Ghouse bin Haji Kader Mustan* v. *Rex* [1946] M.L.J. 36.

(3) *Noordin* v. *Shaik Mohamed Meah Noordin Shah* 10 S.S.L.R. 72.

(4) *Salmah* v. *Soolong* 1 Ky. 421.

(5) *Ibrahim* v. *Gulam Ahmad* (1864) 1 Bom. H.C.R. 236 at p. 239.

(6) *Re Omar and Hanisah* [1948] M.L.J. 186.

(7) *Fatimah* v. *Logan* (1871), 1 Ky. 255.

MAGISTRATE'S CRIMINAL APPEAL.

Tan Boon Teik (Senior Crown Counsel) for the appellant.

R. Ramason for the respondent.

Cur. Adv. Vult.

Winslow J.: This is an appeal by the Crown against the acquittal of the respondent by the learned Second Criminal District Judge on a charge as follows:

> "That he, on or about the 2nd day of February, 1962 at or about 3.00 p.m. at 4-A, Moonstone Lane, Singapore, kidnapped Husseinah Banu binti Mohammed Majamel a female minor under sixteen years of age, from the lawful guardianship of Mohammed Majamel her father, and thereby committed an offence punishable under section 363 of Chapter 119."

Kidnapping a minor from lawful guardianship is defined in section 361 of the Penal Code as the taking or enticing of a minor . . . . under sixteen years of age of a female, out of the keeping of the lawful guardian without such guardian's consent.

The Senior Crown Counsel who argued the appeal intimated that he was more concerned with establishing the principles of law to be applied in these cases than with penal consequences to the respondent.

The facts were not in dispute and may be summarised as follows. The 14-year old Muslim female child in question voluntarily left Singapore in the company of the respondent for Seremban without the consent of her father with a view to getting married to the respondent in Seremban which they did. They now have a son.

At the end of the prosecution case the learned District Judge acquitted the respondent on the ground that, as the girl was of the Hanafi sect and as she had attained puberty she no longer had a lawful guardian and that in the circumstances she could not be said to have been taken away from lawful guardianship within the meaning of section 361 of the Penal Code (Cap. 119). He was also doubtful whether the consent of the girl did not absolve the respondent entirely.

To take the latter point first, it was conceded by counsel for the respondent that the consent of a girl under 16 years of age to her being taken away was immaterial and irrelevant to a charge alleging a taking away without the consent of her lawful guardian. In fact, consent of the lawful guardian is the paramount consideration in the case of such a female under the age of 16 and if any authority be needed, *R.* v. *Kipps*[1] supplies it. In the words of Maule J.:

> "The law throws a protection about young persons of the sex and within the age specified by the statute. It has been determined by the Legislature that at that age young females are not able to protect themselves, or give any binding consent to a matter of this description. It is therefore quite immaterial whether the girl abducted consent or not; if her family, that is to say, those who under the statute may lawfully have the possession and control over her, do not consent to her departure, the offence is completed."

In any case I should have thought that the wording of section 361 is explicit and that the consent of the guardian is an essential factor.

With regard to the finding by the learned District Judge that the girl belonged to the Hanafi sect or to use his words "could just as well have been a member of the Hanafi sect as an adherent of some other sect" I have examined the record in great detail and cannot find any shred of evidence to support the proposition that she was an adherent of the Hanafi sect. In the circumstances the learned District Judge was, in my opinion, precipitate in his finding and the Crown was entitled to succeed on this ground alone. If the respondent had wished to rely on the authority of *Ghouse bin Haji Kader Mustan* v. *Rex* [2], which supports the proposition that a Muslim girl of the Hanafi sect who has attained puberty has no lawful guardian it was for him to establish this by skilful cross-examination of the prosecution witnesses or to raise it in his defence.

Even if there had been evidence that she was of the Hanafi sect this would not, in my opinion, have necessarily concluded the matter in favour of the respondent. In *Ghouse's* case McElwaine C.J. held that a Mohammedan girl who had attained puberty had no guardian and that therefore she could not be taken out of the keeping of the lawful guardian. On an examination of this judgment it would appear that what he meant was that a Mohammedan girl adhering to the tenets of the Hanafi School had no lawful guardian. The most that can be gleaned from the authorities which McElwaine C.J. relied upon is that, according to the rule of the Hanafi sect, a daughter can enter into a contract of marriage on attaining puberty even without her father's consent and that therefore she is only free from the custody of her guardian as regards the selection of her husband.

The emphasis is accordingly on her capacity to marry and not on her absolute freedom from the custody of her guardian for all purposes although two of these authorities, viz. *Noordin* v. *Shaik Mohamed Meah Noordin Shah* [3] and *Salmah* v. *Soolong* [4] have, in extracting this principle from the tenets of the Hanifites, referred to a short paragraph in *Ibrahim* v. *Gulam Ahmad* [5] at page 239, according to which:

"The Hanifites hold that a girl who arrives at puberty, without having been married by her father or guardian, is then legally emancipated from all guardianship, and can select a husband without reference to his wishes. The Shafites, on the other hand, held that a virgin, whether before or after puberty, cannot give herself in marriage without the consent of her father. The effect of a lawful change from the sect of Shafi to that of Hanifa, would be to emancipate the girl, who had arrived at puberty, from the control of her father, and to enable her to marry without consulting his wishes or obtaining his consent."

It appears to me that it was unnecessary to consider the question of the girl's absolute emancipation from the *patria potestas* or the father's guardianship for all purposes in order to extract the principle which both the Straits Settlements cases cited above laid down nor do they attempt to go so far as to decide anything more than that such a girl is free to marry without her father's or guardian's consent.

As the Singapore Court of Appeal held in *Omar and Hanisah* [6], the Guardianship of Infants Ordinance (Cap. 50 of the Revised Edition of 1936, now Cap. 16) makes no exception in the case of Muslims and must be taken to supersede whatever law might have applied previously. Section 5 of this Ordinance provides that the father of an infant shall ordinarily be the guardian of the infant's person and property. As Brown J. in that appeal said:

"The local legislature has made provision for the guardianship of infants, and we cannot go outside the provisions which it has made. For this reason it seems to me that if, in the case of *Ghouse bin Haji Kader Mustan* v. *Rex*, the Court's attention had been drawn to section 5 of the Guardianship of Infants Ordinance the decision must have been different, because to hold that the girl in that case had no lawful guardian was to ignore section 5 which expressly provides that her father was her lawful guardian."

McElwaine C.J. adverted at page 38 in *Ghouse's* case to the fact that he had been referred to no case or ordinance which overrode the principle set out in the Charter of Justice of 1855 that the law of England must be applied subject to such modifications as are necessary to prevent injustice or oppression to the native inhabitants having regard to their several religions, manners and usages. It is clear that had his attention been drawn to the Guardianship of Infants Ordinance he must, as Brown J. said, have reached a different conclusion.

In *Omar's* case, however, the Court of Appeal was considering a question as to who was or should be the lawful guardian of certain Muslim infants and it resolved that question by reference to the Guardianship of Infants Ordinance as being the dominant law applying to that question without being drawn into any exhaustive excursions into the Muslim point of view. The Guardianship of Infants Ordinance however is not English law but part of our law, enacted locally, although it substantially reproduces the English law on the subject and if *Fatimah* v. *Logan* [7] is any authority, Mohammedan law is foreign law in the State and can only be applied in the absence of any statute to the contrary. This may sound an alarming proposition today but this is our heritage from the past which is for the legislative authorities to remedy if they so think fit.

It remains to consider with some circumspection therefore what the expression "lawful guardian" means in relation to section 361 of the Penal Code in the context of the present case. Does it mean the lawful guardian within the contemplation of section 5 of the Guardianship of Infants Ordinance or the lawful guardian under Mohammedan law? One must be careful not to lose sight, whilst engaged in this exercise, of the explanation to section 361 of the Penal Code which states that "lawful guardian" includes any person lawfully entrusted with the care or custody of the minor in question.

It seems to me that, in the light of the authorities, it would be dangerous to regard a Muslim girl of the Hanafi sect as being without any lawful guardian for the purposes of the Penal Code merely because she has attained puberty and is free, without the guardian's consent, to make her own selection of her future husband. To hold otherwise would be to expose every Muslim girl professing the tenets of the Hanafi school, who has attained puberty, to the rapacity or cunning of every would-be Lothario, enticer or potential seducer who would only need to cite *Ghouse's* case to escape conviction and punishment. He could say that the girl in question had no guardian at all as she was free, in the eyes of Muslim law, to ignore her lawful guardian for all purposes as she had none. He could add insult to injury by further saying that, even if he had left her high and dry, without marriage, he would have done no serious legal wrong if any because she had no lawful guardian. Looked at in this way, the consequences of holding that such a girl is guardianless can be readily seen to be indeed alarming and such as the legislature could never have intended. The Penal Code and the Muslim Law on the subject may require to be reconciled if need be, so as to give some meaning to the expression "lawful guardian" without doing violence to language and common sense.

In this connection it is significant that the Muslims Ordinance (Ord. No. 25 of 1957) provides by section 7(5) that the provisions of that section relating to "walis" shall not apply where the woman to be wedded belongs to a school of law under which she can be married *without the consent of her guardian.* The language of this subsection pre-supposes the existence of a lawful guardian; otherwise why should it refer to the immateriality of the consent of her guardian? Furthermore, *Wilson* on Anglo-Mohamedan Law, 6th edition, section 111 states that an unmarried girl who has attained puberty must necessarily have a guardian — who is her father, in the first instance. *Mulla* confirms this in section 357 of his Principles of Mohamedan Law, 14th edition. It is obvious that Muslim law distinguishes between guardianship for different purposes and a girl's freedom to marry without the guardian's consent does not necessarily deprive her of guardianship for all other purposes until marriage.

In my opinion the expression "lawful guardian" in section 361 of the Penal Code must be given a meaning which accords with the provisions of section 5 of the Guardianship of Infants Ordinance and the explanation to section 361. If, in its discretion, the Court decides to modify its strict construction of who the guardian is, it may have recourse to Muslim law so as to do justice to the facts of any particular situation. All I hold now is that, for the purposes of this case, it was wrong to say that the girl in question had no lawful guardian. In the absence of any other evidence the lawful guardian from either point of view was her father until her marriage.

I accordingly called upon the respondent for his defence — the learned District Judge had ceased to hold that office and I wished to avoid, in the interest of all concerned, a retrial before another — having regard to the technical nature of the offence committed. The respondent pleaded guilty and I awarded him an absolute discharge in all the circumstances of the case and in particular as it had been shown that the couple had eloped by mutual consent to escape the objections of her father and had in fact got married.

Respondent discharged.

PUBLIC PROSECUTOR v. TAN SIEW MIN & ANOR.

[A.Cr.J. (Suffian J.) November 8, 1962]

[Alor Star — Kedah Criminal Appeal No. 68 of 1962]

Road Traffic Ordinance, 1958, ss.120(2) and 141(3) — Overloading — Certificate of Inspector of Weights and Measures — Copy for accused — Criminal Procedure Code (Cap. 6), s.399(i).

Criminal Evidence — Proof of overloading — Road Traffic Ordinance, 1958, s.141(3).

The first and second respondents were the driver and owner respectively of the lorry in question. The first respondent was charged with using the lorry on the road carrying a load above its permitted weight and with quitting the lorry without having stopped the engine contrary to rule 14(1) of the Road Traffic Rules, 1959. The second respondent was charged with permitting the use of the lorry for the carriage of goods in excess of the permissible laden weight an offence punishable under section 120(2) of the Road Traffic Ordinance. Both claimed trial. The prosecution during the course of their case put in two certificates by the Inspector of Weights and Measures, Kedah, which stated that the weigh-bridge had been verified and found to be just. At the end of the prosecution case the learned Magistrate without calling on their defence acquitted and discharged both the accused. The Public Prosecutor appealed.

Held: (1) there was no evidence that the Inspector of Weights and Measures, Kedah, was in charge of the weigh-bridge and therefore both the certificates were inadmissible as hearsay evidence and under section 399 of the Criminal Procedure Code because there was no proof that copies of the certificates had been supplied to the respondents as required by the proviso to sub-section (i) of that section;

(2) in view of the common sense meaning of proof and on the facts of this particular case the lorry being overloaded by three tons it was open to the learned Magistrate to find a *prima facie* case that the lorry was overloaded.

Observations of the admissibility of evidence under section 141(3) of the Road Traffic Ordinance.

Cases referred to:—

(1) *Public Prosecutor* v. *Sam Ah Kow* [1955] M.L.J. 1.

(2) *Deputy Public Prosecutor* v. *Dollah bin Aziz* [1950] M.L.J. 250.

(3) *Penny* v. *Nicholas* [1950] 2 All E.R. 89.

(4) *Public Prosecutor* v. *Ng Fah* [1954] M.L.J. 150.

(5) *Public Prosecutor* v. *Ginder Singh & Chet Singh* [1948] M.L.J. 194.

(6) *Public Prosecutor* v. *Sundram* [1955] M.L.J. 159.

MAGISTRATE'S CRIMINAL APPEAL.

Hamzah bin Dato' Abu Samah (Senior Federal Counsel) for the appellants.

A. Jayadeva for the respondent.

Suffian J.: On 6th December, 1961 at about 10.55 p.m., a party of traffic policemen led by the O.C. Traffic, PW1, stopped a lorry at Simpang Kuala, Alor Star. It came to a stop, whereupon both the driver and the conductor of the lorry bolted, leaving the engine still running. The police switched it off and waited until 12.15 a.m. but nobody came forward. So the lorry was driven away and taken to the weigh-bridge at the Alor Star Police Station. There it was weighed and found to be well above 160 cwt., its maximum permissible laden weight.

The first respondent was subsequently charged as a driver with, first, using the lorry on the road carrying a load above its permitted weight, an offence punishable under section 120(2) of the Road Traffic Ordinance, 1958, and secondly, with quitting the lorry without having stopped the engine, an offence against rule 14(1) of the Road Traffic Rules, 1959, and punishable under